IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 317 of 2001

with

CRIMINAL APPEAL No 318 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMKUMAR BHAROSHA NISHAD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 317 of 2001

MS BANNA S DUTTA for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

2. Criminal Appeal No. 318 of 2001

MS BANNA S DUTTA for Petitioner No. 1

MR PR ABICHANDANI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/10/2002

ORAL JUDGEMENT

1. The appellants came to be convicted for offences punishable under Sections 395 read with Section 114 of Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for a period of three months, by virtue of a judgment and order rendered by the learned Additional Sessions Judge, Surat, Camp at Vyara, in Sessions Case No.77 of 1999.

2. As per the prosecution case, the appellants, in company of others, suddenly entered the house of Leelaben Gopalkrishna, at about 8 to 8.30 P.M. on October 15, 1998. The house is located opposite Bala Automobiles. After entering the house, they assaulted Leelaben by gaving her stick and kick blows; snatched away golden Mangalsutra, silver anklets, golden bangles (four in number) and a golden chain from the neck of Krupa, daughter of Leelaben; and they also took away a citizen lady's wrist watch. They robbed mother-in-law of Leelaben of a golden chain, silver anklets and a wrist watch. They intimidated the ladies, forcibly took keys of the cupboard and took away Rs.35,000/- cash as well as two golden bangles and two pairs of anklets. The value of the booty is totalling to Rs.1,43,400/-. A complaint came to be lodged before Bardoli Police Station by Leelaben (Ex.28), on basis of which an offence was registered for offences punishable under Section 395 and 397 of Indian penal Code, Section 25(1)(b) of the Arms Act and Section 135 of the Bombay Police Act. Investigation was made. Accused-Umesh Pannalal came to be arrested at about 12.30 P.M. on 1.11.1998 and discoveries/recoveries were made. Accused-Brijesh Sitaram and Ramkumar came to be arrested on 3.11.1998 and recovery was effected of golden chain. Test identification parade was arranged before the Executive Magistrate and, having found sufficient evidence against the accused persons, a charge sheet was filed before the learned Judicial Magistrate, First Class, at Bardoli. As the offences were triable exclusively by a Court of Sessions, the case was committed to the Court of Sessions and Sessions Case No.77 of 1999 came to be registrered.

3. Charge was framed against the accused persons at Ex.10. The accused persons pleaded not guilty to the charge and came to be tried. Considering the evidence led by the prosecution, the Trial Court came to a conclusion that the prosecution was successful in

establishing the involvement of accused-Umesh alias Panna Mahavirprasasd, Brijesh Sitaram Yadav and Ramkumar Bharosanishad for offence punishable under Section 395 read with Section 114 of Indian Penal Code and awarded the sentence as stated above. Criminal Appeal No.318 of 2001 is preferred by accused-Umesh alias Panna Mahavirprasad and Brijesh Sitaram Yadav, whereas Criminal Appeal No.317 is preferred by Ramkumar Bharosanishad.

4. When the matter came up on board, this Court is informed by learned Additional Public Prosecutor, on basis of a written communication received by him from the jail authorities, Baroda, that the appellants have served the sentence and have been released on 18.6.2002, after having paid the fine, considering the period of set off and remission.

5. Heard learned Advocate, Ms. Dutt, for the appellants and learned Additional Public Prosecutor, Mr. Abichandani, for the respondent-State.

6. Ms. Dutt submitted that the only evidence against the accused persons is their identification by the victim persons, namely, Leelaben, Muktaben and Krupa, at the test identification parade. But, if their evidence is seen, they have admitted that they had seen the photographs of the accused persons before the test identification parade was conducted and, therefore, possibility of wrong implication cannot be ruled out. This aspect has been overlooked by the Trial Court and, therefore, this appeal may be allowed.

7. On the other hand, learned Additional Public Prosecutor, Mr. Abichandani, submitted that, apart from the test identification parade, there is evidence in the form of discovery/recovery of the robbed property, which is unexplained by the accused. Therefore, the conviction cannot be considered to be bad in law.

8. This Court has gone through the record and proceedings, particularly, the evidence of Panch-Kiritbhai and Shaileshbhai of the test identifaction parade Panchnama, the Executive Magistrate-D.C. Patel (Ex.42), who conducted the test identification parade, and Leelaben, Muktaben and Krupa (Ex.27, 30 and 37 respectively), who clearly identified the accused persons. However, Leelaben, Muktaben and Krupa admit during cross-examination that they had seen the photographs of the arrestees before the test idenification parade was conducted. But they also identified the muddamal-golden chain, of which they were

robbed. This evidence has not been properly explained by the accused as to how it came in possession of the property of the victim. This, coupled with other evidence, connects the accused with the offences with which they have been convicted. There appears no reason for this Court to interfere with the order of conviction in absence of any other defect. The appeals, therefore, must fail. The appeals stand dismissed. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Surat, Camp at Vyara, in Sessions Case No.77 of 1999 is hereby confirmed.

[A.L. DAVE, J.]

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